

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 98-916V

**Filed:** November 18, 2008

Not to be published.<sup>1</sup>

THERESA CEDILLO and MICHAEL  
CEDILLO, as parents and natural guardians of  
Michelle Cedillo,

Petitioners,

v.

SECRETARY OF HEALTH AND HUMAN  
SERVICES,

Respondent.

Vaccine Act Interim Costs

### DECISION (INTERIM COSTS)

On August 19, 2008, the petitioners submitted an application for interim attorneys' fees, seeking an award of fees and costs incurred to date in this case filed under the National Vaccine Injury Compensation Program. The total amount of the request is \$2,180,885.29. Of this, \$19,321.28 were costs incurred by the Cedillos, themselves.

On November 12, 2008, the respondent filed an extensive response, arguing that the petitioners were not entitled to an award at this time for all of the fees and most of the costs sought in the application. Respondent noted, however, that respondent has no objection to most of the costs incurred by *the petitioners themselves*. See page 11 of the respondent's filing.

Respondent did note that the Cedillos' personal expenditures included \$1,200 for a "retained medical expert," while the record was not clear as to who this expert was. During an unrecorded status conference held on November 17, 2008, however, counsel for the petitioners explained that this \$1,200 represented a retainer paid to Dr. Marcel Kinsbourne, and pointed to an invoice in the record from Dr. Kinsbourne as well as a check stub reflecting that amount. See Tab B, p. 252, and Tab O, p. 7 of the Application. Those documents satisfy me that the \$1,200 in question was for fees for Dr. Kinsbourne, which are reasonably compensable.

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<sup>1</sup>Because this document contains an explanation for my action in this case, I intend to post this order on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Therefore, as provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, this entire document will be available to the public. *Id.*

The circumstances of this case appear to be appropriate for an interim award of the *Cedillos' own undisputed costs* at this time. In particular, the Cedillos have advanced considerable travel expenses to attend the trial, and have sacrificed beyond their normal means to be a “test case” in the Omnibus Autism Proceeding. There remain additional interim fees and costs that are still subject to dispute, of course, but I will act upon them at a later date.<sup>2</sup>

Accordingly, I hereby award the following award of interim costs, pursuant to 42 U.S.C. § 300aa-15 and *Avera v. HHS*, 515 F.3d 1343 (Fed. Cir. 2008):

A lump sum of **\$ 19,321.28**, in the form of a check payable to the petitioners.

In the absence of a timely-filed motion for review of this Decision (see Appendix B, Rules of the United States Court of Federal Claims), the clerk shall enter judgment in accordance herewith.

/s/George L. Hastings, Jr.

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George L. Hastings, Jr.  
Special Master

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<sup>2</sup>I believe that in the vast majority of Vaccine Act cases, only one award for interim fees and costs, if any, would be appropriate. This case, however, is an extremely rare one. Among other circumstances, the family expended an unusually large amount of money for costs, due to the unusually long trial held far from the petitioners' home. Further, I was informed orally at the status conference that the family is in dire need of prompt reimbursement for this expense. Finally, to resolve the additional complex fees and costs issues will take time, and I do not wish to make the petitioners wait any longer to be reimbursed for the substantial costs that they have personally incurred. Accordingly, I find this award to be appropriately within my discretion under *Avera v. HHS*, 515 F.3d 1343 (Fed. Cir. 2008).